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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/758,065

Filing Date: January 15, 2004

Appellant(s): Kitching et al.

Thibault Fayette
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/28/09 appealing from the Office Action
mailed 9/7/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US	5,240,140	Huen	08-1993
US	US 2002/0033405	Gergek	03-2002
US	2,440,993	West	05-1948
US	6,976,634	Washington	12-2005
US	4,877,230	Winkler et al.	10-1989

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1,5, 7, 8, 9, 12, 13,15,16 are rejected under 35 U.S.C. 102(b) as being anticipated by Huen 5240140 which discloses all the claimed elements including:

(Re: cl 1) A container for dispensing product in sheet form comprising: (i) said product in sheet form which will be dispensed; and (ii) a dispensing aperture for product in sheet form, said aperture having opposing lateral edges, at least one of said lateral edges comprising a rotatable roller, said lateral edges providing a nip passage for controllably dispensing said product in sheet form in a non-downwards direction (c2 L 25-37)
(Re: cl 5) wherein said lateral edges comprise material selected from the group consisting of plastic, metal, composite materials and combinations thereof (rubber c2 L 25-37)

(Re: cl 7) A container for dispensing a product in sheet form, said container comprising: (a) walls, said walls defining an inner cavity of said container for storing said product in sheet form prior to dispensing; and (b) a dispensing aperture in one of said walls, said aperture leading from said inner cavity to the environment external to said container, said aperture having opposing lateral edges, at least one of said lateral edges comprising a rotatable roller, said lateral edges providing a nip passage for controllably dispensing said product in sheet form (c2 L 25-37)

(Re: cl 8) wherein both of said lateral edges comprise rotatable rollers (18 fig 1; 25-37)

(Re: cl 9) wherein said container is either rigid or semi-rigid (c2 L 16-26)

(Re: cl 12) wherein said closure (c) is either a lid or a resealable label (12; c2 L 16-25)

(Re: cl 13) further comprising: (d) a motor connected to said rotatable roller; and (e) optionally, a sensor connected to said motor, which upon activation of said sensor, said sensor activates said motor sufficient to turn said rotatable roller to dispense a predetermined quantity of said product in sheet form (c2 L 25-34)

(Re: cl 15) A container for dispensing a product in sheet form, said article comprising: (A) walls, said walls defining an inner cavity of said container for storing said product in sheet form prior to dispensing and one of said walls is a deck panel which includes a sealing section; (B) a dispensing aperture in said sealing section, said aperture having opposing lateral edges, at least one of said lateral edges comprising a rotatable roller, said lateral edges providing a nip passage for controllably dispensing said product in sheet form; and (C) a lid hingedly in association with one of said walls, said lid being closely overlying said sealing section (c2 L 25-37)

(Re: cl 16) wherein said container body is rigid (c2 L 16-26).

Claim(s) 1-5, 8-9, 13-18 and 20 is/are rejected under 35

U.S.C. 102(b) as being anticipated by Gergek US20020033405A1 which discloses all the claimed elements including:

(Re: cl 1) A container for dispensing product in sheet form comprising: (i) said product in sheet form which will be dispensed; and (ii) a dispensing aperture for product in sheet form, said aperture having opposing lateral

edges, at least one of said lateral edges comprising a rotatable roller, said lateral edges providing a nip passage for controllably dispensing said product in sheet form in a non-downwards direction (§ 32)

(Re: cl 2) wherein said product in sheet form is a continuous web of sheet material divided by a plurality of multiple lines of frangibility running at predetermined intervals substantially transversely to the major axis of the web and defining a plurality of individual wipes (§ 35,36)

(Re: cl 4) wherein both of said lateral edges comprise rotatable rollers (§ 32)

(Re: cl 5) wherein said lateral edges comprise material selected from the group consisting of plastic, metal, composite materials and combinations thereof (§ 36,38 inherent with such a drive system)

(Re: cl 7) A container for dispensing a product in sheet form, said container comprising: (a) walls, said walls defining an inner cavity of said container for storing said product in sheet form prior to dispensing; and (b) a dispensing aperture in one of said walls, said aperture leading from said inner cavity to the environment external to said container, said aperture having opposing lateral edges, at least one of said lateral edges comprising a rotatable roller, said lateral edges providing a nip passage for controllably dispensing said product in sheet form (§ 32)

(Re: cl 8) wherein both of said lateral edges comprise rotatable rollers (§ 32)

(Re: cl 9) 7 wherein said container is either rigid or semi-rigid rigid (12/13 fig 1-inherent with such a shape)

(Re: cl 13) further comprising: (d) a motor connected to said rotatable roller; and (e) optionally, a sensor connected to said motor, which upon activation of said sensor, said sensor activates said motor sufficient to turn said rotatable roller to dispense a predetermined quantity of said product in sheet form (§36-38)

(Re: cl 14)(13) wherein said sensor is selected from the group consisting of light sensors, motion sensors, sound sensors, proximity sensors, travel sensors, rotation sensors, translation sensors, and combinations thereof (§34,36,38)

(Re: cl 15) A container for dispensing a product in sheet form, said article comprising: (A) walls, said walls defining an inner cavity of said container for storing said product in sheet form prior to dispensing and one of said walls is a deck panel which includes a sealing section; (B) a dispensing aperture in said sealing section, said aperture having opposing lateral

edges, at least one of said lateral edges comprising a rotatable roller, said lateral edges providing a nip passage for controllably dispensing said product in sheet form; and (C) a lid hingedly in association with one of said walls, said lid being closably overlying said sealing section (§ 32)

(Re: cl 16) wherein said container body is rigid (12/13 fig 1-inherent with such a shape)

(Re: cl 17) wherein said product in sheet form is a plurality of discrete individual wipes which are interleaved (§ 35,36)

(Re: cl 18) wherein both of said lateral edges comprises rotatable rollers (§ 32)

(Re: cl 20) further comprising: (D) a motor connected to at least one of said pair of nipped rollers; and (E) optionally, a sensor connected to said motor, which upon activation of said sensor, said sensor activates said motor sufficient to turn said rotatable roller to dispense a predetermined quantity of said product in sheet form (§ 36,38).

Claim(s) 1,3-4, 7-10, 15-18 is/are rejected under 35 U.S.C. 102(b) as being anticipated by West 2440993 which discloses all the claimed elements including:

(Re: cl 1) A container for dispensing product in sheet form comprising: (i) said product in sheet form which will be dispensed; and (ii) a dispensing aperture for product in sheet form, said aperture having opposing lateral edges, at least one of said lateral edges comprising a rotatable roller, said lateral edges providing a nip passage for controllably dispensing said product in sheet form in a non-downwards direction (c2 L 34-c3 L 9)

(Re: cl 3) wherein said product in sheet form is a plurality of discrete individual wipes which are interleaved (32 fig 4,8; c1 L 12-39;c4 L 1-11)

(Re: cl 4) wherein both of said lateral edges comprise rotatable rollers (15,16; c2 L 34-55)

(Re: cl 7) A container for dispensing a product in sheet form, said container comprising: (a) walls, said walls defining an inner cavity of said container for storing said product in sheet form prior to dispensing; and (b) a dispensing aperture in one of said walls, said aperture leading from said inner cavity to the environment external to said container, said aperture having opposing lateral edges, at least one of said lateral edges comprising

a rotatable roller, said lateral edges providing a nip passage for controllably dispensing said product in sheet form (c2 L 34-c3 L 9)

(Re: cl 8) wherein both of said lateral edges comprise rotatable rollers (15,16; c2 L 34-55)

(Re: cl 9) wherein said container is either rigid or semi-rigid.

(Re: cl 10) wherein said product in sheet form is a plurality of discrete individual wipes which are interleaved (32 fig 4,8; c1 L 12-39; c4 L 1-11)

(Re: cl 12) wherein said closure (c) is either a lid or a resealable label (11; c2 L 34-55)

(Re: cl 15) A container for dispensing a product in sheet form, said article comprising: (A) walls, said walls defining an inner cavity of said container for storing said product in sheet form prior to dispensing and one of said walls is a deck panel which includes a sealing section; (B) a dispensing aperture in said sealing section, said aperture having opposing lateral edges, at least one of said lateral edges comprising a rotatable roller, said lateral edges providing a nip passage for controllably dispensing said product in sheet form; and (C) a lid hingedly in association with one of said walls, said lid being closely overlying said sealing section (c2 L 34-c3 L 9)

(Re: cl 16) wherein said container body is rigid (c1 L 12-30)

(Re: cl 17) wherein said product in sheet form is a plurality of discrete individual wipes which are interleaved (32 fig 4,8; c1 L 12-39; c4 L 1-11)

(Re: cl 18) wherein both of said lateral edges comprises rotatable rollers (15,16; c2 L 34-55).

As best understood, claim(s) 1,3-5 and 7-10, 15-18 is/are rejected under 35 U.S.C. 102(b) as being anticipated by/or in the alternative, under 35 U.S.C. 103(a) as obvious over West 2440993 which discloses all the claimed elements as previously discussed and West discloses or suggests:

(Re: cl 5) wherein said lateral edges comprise material selected from the group consisting of plastic, metal, composite materials and combinations thereof – (inherent to build such a dispensing roller including at least one of the specified materials).

It would have been obvious at the time of the invention for West to make a roller comprising some componentry comprised of plastic metal or composite materials to provide sufficient stiffness while having sufficient rotational wear resistance to have a marketable longevity and come up with the claimed invention.

Claim Rejections - 35 USC § 103

Claim(s) 1, 5-6, 15-16 and 18-20 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Washington et al. 6976634 in view of Winkler 4877230 wherein the former discloses:

(Re: cl 1,15) A container for dispensing a product in sheet form, said article comprising: (A) walls, said walls defining an inner cavity of said container for storing said product in sheet form prior to dispensing and one of said walls is a deck panel which includes a sealing section (c31 L 55-65) and (C) a lid (268) hingedly in association with one of said walls, said lid being closably overlying said sealing section (c31 L 55-65)
(Re: cl 16) wherein said container body is rigid (c29 L 51-61)

and the latter discloses any the elements not inherently taught by the former including:

(B) a dispensing aperture in said sealing section, said aperture having opposing lateral edges, at least one of said lateral edges comprising a rotatable roller, said lateral edges providing a nip passage for controllably dispensing said product in sheet form (34 with 46 ; c9 L 10-15 ; 74 with 92a/b ; c11 L 45-50);

(Re: cl 18) wherein both of said lateral edges comprises rotatable rollers (36)

(Re: cl 19,5, 6) wherein said wherein said rotatable rollers comprise a metal

core (34 ; c5 L 54-67; c11 L 8-28) surrounded by a plastic coating (36) which contacts said product in sheet form (c5 L 54-c6 L 23) (Re: cl 20) further comprising: (D) a motor connected to at least one of said pair of nipped rollers (34 with 46 ; c9 L 10-15 ; 74 with 92a/b ; c11 L 45-50); and (E) optionally, a sensor connected to said motor, which upon activation of said sensor, said sensor activates said motor sufficient to turn said rotatable roller to dispense a predetermined quantity of said product in sheet form (c14 L 4-64).

It would have been obvious at the time of the invention for Washington et al. to use nip rollers to get a more positive grip on the currency as taught by Winkler et al.. It would have been obvious at the time of the invention for Washington et al. to use plastic coated rollers with metal cores to get a predictable long term positive grip on the currency and lengthy wear of components as taught by Winkler et al..

(10) Response to Amendments/Arguments

Appellant's arguments have been fully considered but they are unpersuasive in overcoming the rejections.

Claim Construction

The claims are apparatus claims

The examiner has construed the claims to be apparatus claims. The claims recite "A container for dispensing product in sheet form". The container is intended to dispense product in sheet form. As recited in the

claims, the container includes "a dispensing aperture". Therefore, the container is an apparatus that dispenses a product.

Since the claims are apparatus claims, the claims read on the cited prior art. MPEP 2115 states that the material or article worked on by an apparatus does not limit an apparatus claim. In other words, a claim recitation regarding the article worked on in an apparatus claim cannot be used to distinguish the claim over a prior art device that is capable of working on the same article. In this application, the dispenser is the apparatus, and the product in sheet form is the material the apparatus is working on (the material being dispensed). Appellant does not argue that the prior art does not disclose the dispenser. Rather, Appellant states that the prior art does not disclose the particular material being dispensed. Because the prior art discloses all the structural limitations recited in the claims, and it is capable of dispensing product in sheet form "that releasably carries a composition of matter", the claim reads on the prior art.

The term "a substrate that releasably carries a composition of matter"

Additionally, the prior art discloses the limitation "wherein said product in sheet form comprises a substrate that releasably carries a

composition of matter". All objects are made of matter. Therefore, the sheets disclosed in the prior art are substrates made of matter. Moreover, the atom is the basic unit of matter. The sheets disclosed in the prior art are formed from millions of atoms joined together via bonds. These bonds are capable of being broken by mechanical (tearing, abrasion, etc.) means, thus releasing some atoms or groups of atoms. Therefore, the prior art discloses product in sheet form that comprises a substrate that releasably carries a composition of matter.

Huen

The invention is the dispenser. Applicant's previous amendment was directed at narrowing the dispensate that is capable of being dispensed, rather than narrowing the scope of the dispenser. The dispenser is capable of dispensing a sheet if a release agent is added to the sheet or if the sheet itself releases matter.

There is nothing within the current specified references and combinations that would create any difficulty in dispensing a dispensate with the added feature of releasing a composition of matter from a substrate. Applicant needs distinguish his dispenser from the prior art premised upon structural elements in the dispenser, not merely by

selecting a sheet having additional post dispensing features. Further, the article worked upon does not limit apparatus claims. MPEP 2115.

Releasably carrying a composition of matter is a broad claim element that encompasses releasing in any form of particles from the sheet in any manner.

Paper products readily release small particles with the movement such as bending. Further, the paper cards of Huen may have particles of matter released with a tearing of the cards.

Gergek

The invention is the dispenser. Appellant's previous amendment was directed at narrowing the dispensate that is capable of being dispensed, rather than narrowing the scope of the dispenser. The dispenser is capable of dispensing a sheet if a release agent is added to the sheet or if the sheet itself releases matter.

There is nothing within the current specified references and combinations that would create any difficulty in dispensing a dispensate with the added feature of releasing a composition of matter from a substrate. Appellant needs distinguish his dispenser from the prior art premised upon structural elements in the dispenser, not merely by

selecting a sheet having additional post dispensing features. Further, the article worked upon does not limit apparatus claims. MPEP 2115.

Releasably carrying a composition of matter is a broad claim element that encompasses releasing in any form of particles from the sheet in any manner.

Tissues readily release small particles with the movement such as bending. Further, the tissues cards of Gergek have particles of matter released with a tearing of the cards.

West

The invention is the dispenser. Appellant's previous amendment was directed at narrowing the dispensate that is capable of being dispensed, rather than narrowing the scope of the dispenser. The dispenser is capable of dispensing a sheet if a release agent is added to the sheet or if the sheet itself releases matter.

There is nothing within the current specified references and combinations that would create any difficulty in dispensing a dispensate with the added feature of releasing a composition of matter from a substrate. Appellant needs distinguish his dispenser from the prior art premised upon structural elements in the dispenser, not merely by

selecting a sheet having additional post dispensing features. Further, the article worked upon does not limit apparatus claims. MPEP 2115.

Releasably carrying a composition of matter is a broad claim element that encompasses releasing in any form of particles from the sheet in any manner.

Paper products readily release small particles with the movement such as bending. Further, the Paper towels of West have particles of matter released with a tearing.

Washington and Winkler

Winkler clearly has a nip, including rollers, in fact several nips (34 with 46 ; c9 L 10-15 ; 74 with 92a/b ; c11 L 45-50).

(34 with 46 ; c9 L 10-15 ; 74 with 92a/b ; c11 L 45-50).

The invention is the dispenser. Appellant's previous amendment was directed at narrowing the dispensate that is capable of being dispensed, rather than narrowing the scope of the dispenser. The dispenser is capable of dispensing a sheet if a release agent is added to the sheet or if the sheet itself releases matter.

There is nothing within the current specified references and combinations that would create any difficulty in dispensing a dispensate

with the added feature of releasing a composition of matter from a substrate. Appellant needs distinguish his dispenser from the prior art premised upon structural elements in the dispenser, not merely by selecting a sheet having additional post dispensing features. Further, the article worked upon does not limit apparatus claims. MPEP 2115.

Releasably carrying a composition of matter is a broad claim element that encompasses releasing in any form of particles from the sheet in any manner.

Paper products readily release small particles with the movement such as bending. Further, the paper currency of West has particles of matter released with a tearing of the paper currency.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Summary

As the paper products dispensed in the references release matter upon bending or tearing and further as MPEP 2115 proscribes material

worked may not be used to distinguish over the prior art, the rejections ought be affirmed.

Conclusion

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/M. E. B./

Examiner, Art Unit 3653

Michael E. Butler, Patent Examiner

/Patrick H. Mackey/

Supervisory Patent Examiner, Art Unit 3653

/Marc Jimenez/

TQAS TC 3600

Art Unit: 3653

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